

REMARKS

By this amendment, Applicants amend claim 11 and add claim 12. Claims 2-7 and 10-12 are pending in this application.

Applicant amends claim 11 and adds claim 12 to more appropriately define the claimed subject matter. This amendment and new claim do not add any new subject matter. The Specification as originally filed supports new claim 12, such as at pg. 15, third paragraph, to pg. 16, first paragraph, and also in Figure 10A, such as by steps ST 26 and ST 27.

§102(b) Rejection of Claims 2-4, 6, 7, 10, and 11 over *Herz et al.*

Applicant respectfully traverses the rejection of claims 2-4, 6, 7, 10, and 11 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,758,257 to Herz et al. ("*Herz et al.*"). To properly anticipate Applicant's claims under 35 U.S.C. § 102, each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference. See M.P.E.P. § 2131. *Herz et al.* fails to disclose each and every element recited in independent claim 11, from which claims 2-4, 6, 7, and 10 depend.

For example, *Herz et al.* fails to disclose a receiver comprising, inter alia, "virtual channel guide creating means for creating a virtual channel guide in which programs are located by utilizing said user profile, wherein said virtual channel guide creating means locates a program into a virtual channel only when its corresponding time is not overlapped with any program located in said virtual channel, and shifts to a consecutive virtual channel when overlapped," as recited in amended claim 11.

Instead, *Herz et al.* teaches, “[a]lthough the customer may define time windows which conflict with each other, in terms of overlapping and containment, only one of the windows in the conflicting set can be used in the final assignment.” (col. 22, lines 52-54). Customer profiles and content profiles are used to develop “virtual channels” so that the customer can view the video programming predicted to be most desirable to that customer. (col. 22, line 66 to col. 23, line 1). “The ‘virtual channels’ may be displayed on dedicated channels, or the recommended programming may be highlighted directly on the electronic program guide or displayed on the customer’s screen as recommended programming selections.” (col. 23, lines 1-5). “Also, the channels may be reprioritized for presentation on the electronic program guide on the basis of the calculated ‘virtual channels’.” (col. 23, lines 5-7).

However, *Herz et al.* fails to disclose a virtual channel guide creating means that “locates a program into a virtual channel only when its corresponding time is not overlapped with any program located in said virtual channel, and shifts to a consecutive virtual channel when overlapped,” as required by claim 11 (emphasis added). For example, *Herz et al.* is silent on the matter of “shifting” programming to another virtual channel when that programming is overlapped in time.

In addition, *Herz et al.* fails to disclose that the “virtual channels” are an ordered set such that one of the virtual channels has a “consecutive” virtual channel, as required by claim 11 (emphasis added). A second virtual channel is “consecutive” to a first virtual channel when the second virtual channel follows the first virtual channel in order. For example, the teaching in *Herz et al.* that “the channels may be reprioritized for presentation on the electronic program guide on the basis of the calculated ‘virtual

channels” (col. 23, lines 5-7) does not constitute a teaching of a “consecutive” relationship between the “virtual channels.” Thus, *Herz et al.* does not disclose “virtual channel creating means ... [that] shifts to a consecutive virtual channel when overlapped.”

§103(a) Rejection of Claim 5 over *Herz et al.* and *Hodge et al.*

Applicant respectfully traverses the rejection of claim 5 under 35 U.S.C. §103(a) as being unpatentable over *Herz et al.* in view of U.S. Patent No. 6,564,381 to Hodge et al. (“*Hodge et al.*”).

To establish a *prima facie* case of obviousness under §103(a), each of three requirements must be met. “First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art,” to combine references or modify a reference. MPEP § 2143 (8th ed. Rev. Feb. 2003). Second, a reasonable expectation of success must exist that the proposed modification will work for the intended purpose. *Id.* Moreover, both of these requirements must “be found in the prior art, not in applicant’s disclosure.” *Id.* Third, the reference or references, taken alone or in combination, must disclose or suggest every element recited in the claims. *Id.*

Claim 5 is allowable over *Herz et al.* and *Hodge et al.* because these references do not teach or suggest, alone or in combination, each and every element of independent claim 11, from which claim 5 depends. For example, *Herz et al.* fails to teach or suggest “virtual channel guide creating means for creating a virtual channel guide in which programs are located by utilizing said user profile, wherein said virtual

channel guide creating means locates a program into a virtual channel only when its corresponding time is not overlapped with any program located in said virtual channel, and shifts to a consecutive virtual channel when overlapped,” as recited in claim 11 (emphasis added).

Hodge et al. does not make up for the deficiencies of *Herz et al.* because *Hodge et al.* appears to be silent on the matter of “virtual channel guide creating means for creating a virtual channel guide in which programs are located by utilizing said user profile, wherein said virtual channel guide creating means locates a program into a virtual channel only when its corresponding time is not overlapped with any program located in said virtual channel, and shifts to a consecutive virtual channel when overlapped,” as recited in claim 11.

Thus, claim 5, which depends from claim 11, should be allowed over *Herz et al.* and *Hodge et al.*

CONCLUSION

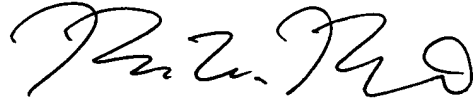
In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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